

# EXHIBIT 33

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel.  
4 MIKE HUNTER, ATTORNEY GENERAL  
OF OKLAHOMA,  
5 Plaintiff,

6 vs.

Case No. CJ-2017-816

7 PURDUE PHARMA, L.P.; PURDUE  
8 PHARMA, INC.; THE PURDUE  
9 FREDERICK COMPANY; TEVA  
10 PHARMACEUTICALS USA, INC.;  
11 CEPHALON, INC.; JOHNSON &  
12 JOHNSON; JANSSEN PHARMACEUTICALS,  
13 INC.; ORTHO-McNEIL-JANSSEN  
14 PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
11 JANSSEN PHARMACEUTICA, INC.;  
12 ALLERGAN, PLC, f/k/a ACTAVIS,  
13 INC., f/k/a WATSON  
14 PHARMACEUTICALS, INC.; WATSON  
LABORATORIES, INC.; ACTAVIS, LLC  
and ACTAVIS PHARMA, INC., f/k/a  
WATSON PHARMA, INC.,  
15 Defendants.

16 VIDEOTAPED DEPOSITION OF SCOTT FISHMAN, M.D.

17 February 26, 2019

18 9:43 a.m.

19  
20 4860 Y Street, Suite 3020

21 Sacramento, California

22  
23 REPORTED BY:

24 MARYANN H. VALENOTI

25 CSR #11266, RPR, CRR

1 Q. And you worked with them for many years?

2 A. Yes.

3 Q. Do you believe that had they known this,  
4 they would have wanted to engage with Janssen as a  
5 key opinion leader?

6 MR. EHSAN: Objection, calls for  
7 speculation.

8 THE WITNESS: I -- yeah, I don't know what  
9 they would do or what they were thinking.

10 BY MS. BALDWIN:

11 Q. If you turn to Page 8, it looks like they  
12 sampled consistent of the -- the sample of 1,000  
13 physicians were from five different regions;  
14 correct?

15 MR. EHSAN: Objection to form.

16 THE WITNESS: Yes.

17 BY MS. BALDWIN:

18 Q. And they broke down the Respondents by  
19 specialty, and the majority were primary care  
20 physicians; is that correct?

21 A. Yes.

22 MR. EHSAN: Same objection.

23 THE WITNESS: Yes.

24 BY MS. BALDWIN:

25 Q. And then there's -- on the following page,

1       there is a table that shows the number and  
2       percentage of doctors by Duragesic decile in each  
3       region. Do you see that?

4               MR. EHSAN: Objection to form.

5               THE WITNESS: Yes. Can you tell me what a  
6       "Duragesic decile" means?

7               MR. ROBINSON: You can't ask questions.

8               THE WITNESS: Sorry.

9       BY MS. BALDWIN:

10              Q. Well, again, did you know -- you didn't  
11       know until I told you today that -- correct, that  
12       Janssen ranked physicians based on how often they  
13       prescribed their products; correct?

14              A. Correct.

15              MR. EHSAN: Objection to form.

16       BY MS. BALDWIN:

17              Q. And it's typically on a scale of 1 to 10?

18              A. Yes.

19              MR. EHSAN: Objection to form.

20       BY MS. BALDWIN:

21              Q. You didn't know that prior to today?

22              MR. EHSAN: Objection to form.

23              THE WITNESS: I think it was a scale of 1  
24       to 7. On Page 6 it says 1 to 7, but I did not know  
25       that until today.

1 BY MS. BALDWIN:

2 Q. Yeah, 1 to 7 is the influence of a key  
3 opinion leader on prescribing.

4 A. Oh, I see. Got it.

5 MR. EHSAN: Objection to form.

6 BY MS. BALDWIN:

7 Q. This is a pretty --

8 A. Yeah, involved.

9 Q. This PowerPoint is a pretty involved  
10 analysis of the influence of key opinion leaders on  
11 physicians prescribing. Would you -- wouldn't you  
12 say?

13 MR. EHSAN: Objection to form.

14 MR. ROBINSON: Objection to form.

15 THE WITNESS: Yes.

16 BY MS. BALDWIN:

17 Q. If you turn to Page 12, do you see that  
18 they -- Janssen did a point allocation summary.  
19 "Each Respondent was asked to assign points based  
20 on the level of influence of these parameters on  
21 his prescribing. The most influential factor was  
22 assigned 100 points, and no two factors were to be  
23 assigned the same value by a Respondent. A summary  
24 of the response is as follows in the next two  
25 slides: First one with overall results, and the

1 second one by specialty group of Respondent";  
2 correct?

3 MR. EHSAN: Objection to form.

4 THE WITNESS: Yes.

5 BY MS. BALDWIN:

6 Q. Give you an example of Question 10:  
7 "Please consider the following specific factors  
8 that may influence your prescribing of opioids. Of  
9 course many other factors will influence your  
10 prescribing, but we are interested in the relative  
11 influence of these particular factors"; correct?

12 MR. EHSAN: Objection to form.

13 THE WITNESS: Yes.

14 BY MS. BALDWIN:

15 Q. And these factors include peer  
16 interaction; correct?

17 A. Yes.

18 MR. EHSAN: Objection to form.

19 BY MS. BALDWIN:

20 Q. Availability of coupons and/or vouchers?

21 MR. EHSAN: Same objection.

22 THE WITNESS: Yes.

23 BY MS. BALDWIN:

24 Q. Patient request for specific drugs?

25 MR. EHSAN: Same objection.

1 THE WITNESS: Yes.

2 BY MS. BALDWIN:

3 Q. Sales representative messages?

4 MR. EHSAN: Same objection.

5 THE WITNESS: Yes.

6 BY MS. BALDWIN:

7 Q. Influence of opinion leaders?

8 MR. EHSAN: Same objection.

9 THE WITNESS: Yes.

10 BY MS. BALDWIN:

11 Q. Peer-reviewed journal articles or studies?

12 MR. EHSAN: Same objection.

13 THE WITNESS: Yes.

14 BY MS. BALDWIN:

15 Q. Medical education?

16 MR. EHSAN: Same objection.

17 THE WITNESS: Yes.

18 BY MS. BALDWIN:

19 Q. Formulary status?

20 MR. EHSAN: Same objection.

21 THE WITNESS: Yes.

22 BY MS. BALDWIN:

23 Q. Regulatory liability concerns?

24 A. Yes.

25 MR. EHSAN: Same objection.

1 used them before.

2 We didn't use them excessively in my  
3 practice, and we rarely use them at very high  
4 doses. So that's a long-winded yes.

5 You know, I think when I present, that  
6 would be the basis that I would come from, and no  
7 one would shift me, and some people disagreed with  
8 my positions and other people agreed.

9 In the long run, I believe that the work  
10 that I did would be embraced by pharmaceutical  
11 companies, because in the long run, pharmaceutical  
12 companies wouldn't have successful products unless  
13 they were used safely.

14 BY MR. ERCOLE:

15 Q. In fact, pharmaceutical companies did  
16 sponsor, indirectly at least, presentations that  
17 you've given on these very topics; correct?

18 MS. BALDWIN: Objection, leading.

19 THE WITNESS: I would say they sponsored  
20 the book Responsible Opioid Prescribing, which if  
21 you really read it, is basically a book that says  
22 be careful.

23 BY MR. ERCOLE:

24 Q. It's a book to physicians saying be  
25 careful, these are the risks associated with



1       opioids potentially; correct?

2           A.     This is a dangerous group of drugs that we  
3       have to use carefully or we'll use the right to use  
4       them, which is something I say in the book.

5           Q.     And the book you're referring to is  
6       Responsible Opioid Prescribing; is that correct?

7           A.     Correct.

8           Q.     Just we heard a lot of -- we'll get into  
9       some of the content of that book a little bit  
10      later, but we had a lot of questions about  
11      Responsible Opioid Prescribing. Just to clarify,  
12      the opinions expressed in that book are your  
13      independent opinions and your independent opinions  
14      only; correct?

15           MS. BALDWIN: Objection, leading.

16           THE WITNESS: They're my independent  
17      opinions, but with that said, I wrote the book as a  
18      commissioned production for the Federation of State  
19      Medical Boards to articulate what I thought was an  
20      important -- were important guiding principles from  
21      the model policy, which gave medical boards  
22      guidance on how to investigate physicians if they  
23      were called out for their prescribing. Does that  
24      make sense?

25           So with that, that was really my

1 framework, and I built it -- I built the  
2 Responsible Opioid Prescribing case out from there.

3 BY MR. ERCOLE:

4 Q. Understand, and we'll get into some of  
5 these topics a little bit later, but at least with  
6 respect to the views expressed in Responsible  
7 Opioid Prescribing, the book that you authored, is  
8 it fair to say that those views were developed by  
9 you independent from any pharmaceutical company  
10 influence?

11 MS. BALDWIN: Objection, leading.

12 THE WITNESS: Independent of any direct  
13 influence. Again, it's all an amalgamation of all  
14 the experiences and thoughts and ideas that I've  
15 had, but they were in my independent views.

16 BY MR. ERCOLE:

17 Q. And the book reflects your independent  
18 views; correct?

19 A. Correct.

20 MS. BALDWIN: Objection, leading.

21 THE WITNESS: I would say the book is  
22 consistent with my views throughout, throughout its  
23 evolution of editions.

24 BY MR. ERCOLE:

25 Q. There have been -- with respect to that

1 book and again we'll get into this a little bit, is  
2 it fair to say there have been two editions?

3 A. There have been three editions. The first  
4 two were called First and Second Edition. The  
5 third was called the Second Edition Expanded.

6 Q. Dr. Fishman, you understand this case was  
7 brought by the -- strike that. Let me go back.

8 You mentioned before that you have no  
9 direct knowledge, and I don't want to misquote you,  
10 but this is what I wrote down. You have no direct  
11 knowledge of how any company in this case marketed  
12 its drugs. Do you recall saying that?

13 MS. BALDWIN: Objection, leading.

14 THE WITNESS: Yes.

15 BY MR. ERCOLE:

16 Q. And is that accurate?

17 A. Yes.

18 Q. You understand that this case is -- strike  
19 that.

20 With respect to your reference to drugs,  
21 that would include opioid medicines; correct?

22 MS. BALDWIN: Objection.

23 THE WITNESS: Correct.

24 BY MR. ERCOLE:

25 Q. You understand this case is brought by the

1 BY MR. ERCOLE:

2 Q. Are you aware of any promotional or  
3 marketing statements made about opioids from Watson  
4 Laboratories?

5 A. No.

6 Q. Have you ever had any communications with  
7 a company known as Actavis, LLC, to the best of  
8 your understanding?

9 A. Not that I recall.

10 Q. Do you ever -- were you ever aware of any  
11 funding that you've received directly or indirectly  
12 from a company known as Actavis, LLC?

13 A. Not that I know of.

14 Q. Are you aware of any promotional or  
15 marketing statements about opioids made by Actavis,  
16 LLC?

17 A. Not that I am aware of.

18 Q. Are you aware of what medicines, if any,  
19 Actavis Pharma, Watson Laboratories or Actavis, LLC  
20 manufactures?

21 A. I am not.

22 Q. Do you recall any documents that the State  
23 showed you today about any of those entities?

24 MS. BALDWIN: Object to form.

25 THE WITNESS: I think there was one

1 document that listed Watson, and, I mean, it could  
2 have even been in my book. I think I saw the name  
3 "Watson" somewhere.

4 BY MR. ERCOLE:

5 Q. Sitting here today, can you  
6 recall specifically about --

7 A. I don't know if that happened today, no.

8 MS. BALDWIN: Object to form.

9 BY MR. ERCOLE:

10 Q. Are you aware of any -- Dr. Fishman, are  
11 you aware of any -- you've heard of the company  
12 Teva, USA; is that fair to say?

13 A. Yes.

14 Q. Are you aware of any false or misleading  
15 statements that Teva USA has ever made about  
16 opioids?

17 A. No.

18 Q. You've heard of the company Cephalon; is  
19 that fair?

20 A. Yes.

21 Q. Are you aware of any -- strike that.

22 Do you have any personal knowledge of any  
23 false or misleading statements that Cephalon has  
24 ever made about opioids?

25 MS. BALDWIN: Object to form. I should

1 say I have a history with Cephalon in that they  
2 made misleading statements about me.

3 BY MR. ERCOLE:

4 Q. Okay. With respect to making misleading  
5 statements about you, do you recall what that issue  
6 was?

7 A. The issue was that I agreed to do a public  
8 service announcement, and I think it was Cephalon  
9 at the time, and then it became Teva, and I signed  
10 an agreement that said that I wasn't getting paid,  
11 and it would only be for public service, public  
12 education. It was actually a commentary that I  
13 made at a professional meeting about the risk of  
14 addiction and abuse in children. They wound up  
15 putting it up on their marketing website,  
16 unbeknownst to me, something that they later took  
17 off and apologized for.

18 Q. So is it fair to say when that issue was  
19 brought to your attention, that they immediately  
20 took off the video from the website?

21 A. Yes.

22 MS. BALDWIN: Object to form.

23 THE WITNESS: Yes.

24 BY MR. ERCOLE:

25 Q. You said Cephalon also apologized to you.

1 risks of opioids.

2 BY MR. ERCOLE:

3 Q. And then Cephalon went and put that,  
4 actually, on its website; is that correct?

5 MS. BALDWIN: Objection, leading.

6 THE WITNESS: That is correct, or Teva  
7 did. I'm not sure.

8 BY MR. ERCOLE:

9 Q. Fair enough. Once you said, Hey, could  
10 you take that down because there was an incorrect  
11 attribution of some payment to you in there, they  
12 immediately did that; is that fair to say?

13 MS. BALDWIN: Objection, leading.

14 THE WITNESS: They took it down because it  
15 was never intended to be used in their marketing,  
16 and there was also an inaccurate attribution of  
17 payment to me.

18 BY MR. ERCOLE:

19 Q. In connection with that particular video,  
20 was there anything false or misleading other than  
21 the attribution of payment to you that was  
22 associated with that?

23 MS. BALDWIN: Object to form.

24 THE WITNESS: No.

25

1 BY MR. ERCOLE:

2 Q. Other than that medication attribution of  
3 you receiving a payment, anything false or  
4 misleading that you can recall Cephalon making  
5 about opioids?

6 MS. BALDWIN: Object to form.

7 THE WITNESS: No.

8 BY MR. ERCOLE:

9 Q. With respect to the misattribution of  
10 payment that you just described, that was disclosed  
11 as part of the video; is that correct?

12 MR. ROBINSON: Object to form.

13 MS. BALDWIN: Objection.

14 THE WITNESS: I actually don't know. It  
15 was somehow transmitted to media sources that I was  
16 paid, so Cephalon made a statement that I wasn't --  
17 in fact, reproduced this document I had them sign  
18 that stated that I would not be paid. These were  
19 my own ideas. This would only be used for a public  
20 service announcement, and it would not be used for  
21 marketing purposes or for corporate purposes.

22 BY MR. ERCOLE:

23 Q. So we looked at and I asked you to look at  
24 Exhibit 1 in your CV. There are a number of  
25 different categories in this particular document,



1 it's very extensive, very impressive. If you look  
2 to, it looks like it's Bates marked as FISH 8; do  
3 you see that on the bottom right-hand corner?  
4 There is a section that says, "Teaching Lectures  
5 and Presentations"; do you see that?

6 A. Yes.

7 Q. And it looks like there are -- if you  
8 scroll through, it looks like there are 566 of  
9 them; do you see that?

10 A. Yes, as of August 2017.

11 Q. Sitting here today with respect to those  
12 lectures and presentations, could you identify a  
13 single one of those lectures or presentations that  
14 did not reflect your own independent medical  
15 opinion?

16 A. No.

17 Q. Because they all did reflect your own --

18 MS. BALDWIN: Object to form.

19 BY MR. ERCOLE:

20 Q. They all did reflect your own independent  
21 medical opinion?

22 MS. BALDWIN: Objection, leading.

23 THE WITNESS: They did.

24 BY MR. ERCOLE:

25 Q. And if you turn to the next category, it